IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

CARLOS ARMSTRONG, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 509.

APPEAL FROM THE COURT OF CLAIMS.

Suit to recover the tariff duties levied and collected in Porto Rico upon goods from New York, Philadelphia, and Baltimore.

ASSIGNMENT OF ERRORS AND BRIEF OF APPELLANT.

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BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

Carlos Armstrong, the appellant, was at the time this action accrued and now is a subject of the Queen of Great Britain, and has never renounced or forfeited his allegiance to the sovereign of that Kingdom; and he sues in the Court of Claims under authority of section 1068 R. S. U. S., which provides that—

> "Aliens, who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction."

The allegations in the amended petition set up the fact that Great Britain does grant to citizens of the United States the right to prosecute claims against that Government.

He sues for money improperly collected of him, as he alleges, and which has been paid into the United States Treasury.

On this point the Mosby Case, 133 U. S., page 273, is cited as authority for this action.

See also Lawson's Case, 104 U. S., 164.

At the times mentioned in the petition said appellant was a merchant doing business at Ponce, in the island of Porto Rico. For the purpose of carrying on said business he imported directly from other ports of the United States into Porto Rico articles and merchandise of the growth, produce, or manufacture of the United States, or which, if grown, produced, or manufactured in other countries, had been regularly entered in ports of entry of the United States and lawful duties paid thereon.

Prior to the 12th day of August, 1898, a state of war existed between the Kingdom of Spain and the United States of America. Prior to said date the island of Porto Rico belonged to the Kingdom of Spain as a colonial possession thereof and had been for a long time prior to said date under the sovereignty of the Kingdom of Spain, which had there established a civil government, and said government had enacted among other laws certain tariff or customs duties upon imports into the island of Porto Rico from the United States and other countries, and such Spanish or Porto Rican tariff or customs laws were enforced at the seizure and occupation of said island by the military and naval forces of the United States in the month of July, 1898.

On the 12th day of August, 1898, a protocol providing for the cession of the island of Porto Rico to the United States and for a treaty of peace between the Kingdom of Spain and the United States of America and for the cession of the island of Porto Rico to the United States was signed by the representatives of both Governments. Thereafter, and on the 10th day of December, 1898, the treaty of peace was entered into and signed by the duly authorized representatives of both Governments.

On the 6th day of February, 1899, said treaty was ratified by the Senate of the United States, and was thereafter ratified by the Queen Regent of Spain on the 19th day of March, 1899, and by the Spanish Cortez, and ratifications thereof were exchanged at the city of Washington on the 11th day of April, 1899, and on the same day proclaimed by the President.

Prior to the signing of the said protocol, and in the month of July, 1898, after the first landing of the military forces of the United States upon the island of Porto Rico, there were some skirmishes between the United States forces and the Spanish stationed on the said island, but all hostilities of every kind ceased from and after the 12th day of August, 1898, the date of the signing of the protocol, and from that date down to the present time there have been no hostilities of any kind upon said island, and no military operations have been conducted by the United States forces against the Spanish forces or against any other hostile force on the island, but immediately upon the signing of the said protocol, and as therein provided, the island was abandoned by Spain and her possession and sovereignty thereof relinquished, and all the Spanish naval and military forces were immediately withdrawn and the island was evacuated, and all public property thereon was delivered to and taken possession of by the United States under said protocol, and said island has ever since been and now is in peaceable possession and under the sovereignty of the United States, and since the 12th day of August, 1898, the island has been and now is in a condition of peace, and the inhabitants thereof have been in the enjoyment of civil rights, except as such rights have been affected by certain orders of the President and of the War Department and of the military forces of the United States, more particularly the orders for the collection of duties herein referred to.

Under the terms of a certain proclamation of Major-General Miles, commanding the United States military forces in Porto Rico, the former Spanish and Porto Rican customs and tariff laws were continued in operation, and duties on exports from the United States into said island were collected thereunder in that part of the island then

occupied by the military forces of the United States from the 26th day of July, 1898, until the 19th day of August, 1898.

On the 19th day of August, 1898, customs tariff and regulations for ports in Porto Rico in possession of the United States were promulgated by an order of the President of the United States, and duties were collected thereunder until the 1st day of February, 1899.

On the 1st day of February, 1899, the amended customs tariff and regulations for ports in Porto Rico were promulgated by an order of the President of the United States as a tariff, fixing and providing for the collection of duties upon imports into Porto Rico from all ports of the United States, as well as from foreign countries, and thereafter duties were collected under the said amended customs tariff and regulations, and amendments thereof were made from time to time by the order of the President.

During the period from the 12th of August, 1898, until the 5th day of December, 1899, the imposition and collection of customs duties upon all imports into the island of Porto Rico from various ports of the United States, including the imports of the appellant from the ports of New York, Baltimore, and Philadelphia, and upon all exports from said ports of the United States, including the goods exported to the appellant from the ports aforesaid to the island of Porto Rico, were in fact made and enforced, levied, and collected by the War Department and the military forces of the United States. No part of said customs duties collected during the aforesaid period under the Spanish tariff and under the proclamation of Major-General Miles and under the customs tariff and regulations and amended customs tariff and regulations was levied or collected by the Treasury Department of the United States or by any of the civil authorities of the United States.

All the duties so collected by the War Department and military authorities, including those paid by the appellant upon imports into Porto Rico from the United States, and exports from the United States into Porto Rico, are now in the possession of and held by the United States of America.

Between the said dates of August 12, 1898, and December 5, 1899, the appellant in conducting his business, purchased in other ports of the United States, to wit, New York, Baltimore, and Philadelphia, and ordered on consignment from said ports, certain goods, wares, and merchandise necessary to his business, which were the growth, produce, or manufacture of the United States, or if of the growth, produce, or manufacture of a foreign country had been duly entered and lawful duty paid thereon in some one of the other ports of entry of the United States. Said goods, wares, and merchandise so purchased and consigned were shipped directly to the port of Ponce, Porto Rico.

On the arrival of said goods, wares, and merchandise into the port of Ponce, Porto Rico, the same were regularly entered by the appellant, as required by the military officers of the United States and by the customs regulations made by the President, and were taken into the possession and custody of the United States, and on such portions as were received prior to February 1, 1899, duties and taxes were charged and collected under orders promulgated by the President of the United States, and on such portions thereof as were received after February 1, 1899, duties and taxes were charged in accordance with a certain

amended order, rules and regulations and schedules, made and issued by the President of the United States, dated January 20, 1899, and promulgated by the War Department.

The surrender and delivery of said goods was refused appellant by the officers and agents of the United States unless and until he should pay the duties and taxes thereon.

Said officers and agents of the United States demanded and collected of the appellant, against his protest and over his objection, duties and taxes on said goods, and he, in order to obtain his said goods, and to continue to carry on his business, was compelled to, and did, pay duties and taxes as above mentioned to said officers and agents at the port of entry of Ponce, Porto Rico, at the dates and for the goods, wares, and merchandise, and in the several sums, set out in the schedule marked "Schedule A," and which was annexed to and made a part of his amended petition in the Court of Claims. Said taxes and duties so paid amount to the total sum of thirty-one thousand five hundred and thirty dollars and sixty-five cents ($31,530.65), and the money so collected was received into the Treasury of the United States. No part of the said duties and taxes has ever been repaid to the appellant by the United States. He has demanded the same and payment has been refused.

The appellant claims that the imposition and collection of duties and taxes aforesaid were in violation of the rights and privileges secured to him under the Constitution and laws of the United States, and also that the imposition and collection of said duties are in violation of the treaty of peace between the United States and Spain.

Article 9 of said treaty provides that:

> "Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to *other foreigners*. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they reside."

The appellant brought suit in the Court of Claims to recover the amount of said duties and taxes paid by him. The original petition was filed on the —— day of ———1. Afterwards, on the 13th day of November, 1900, the appellant by leave of the court, filed an amended petition, which is made a part of the record in this case. To this amended petition the United States, by its Attorney-General, filed a demurrer on the ground, to wit, that the Court of Claims has no jurisdiction, and, secondly, that the statements contained in the amended petition do not state facts sufficient to constitute a cause of action or entitle the appellant to recover.

The case was heard in the Court of Claims on the demurrer; and on the 10th day of December, 1900, that court rendered a decision

sustaining the demurrer upon the second ground thereof, and holding that the amended petition does not state facts sufficient to constitute a cause of action, and dismissing the same.

From the judgment of that court Armstrong took an appeal to the Supreme Court of the United States, which was allowed, and the appeal perfected, and the case is now before this court for its consideration.

ASSIGNMENT OF ERRORS.

The claimant in this action makes the following assignment of errors:

First. The court erred in sustaining the demurrer of the United States to the appellant's amended petition.

Second. The court erred in holding that the goods, wares, and merchandise of the appellant were subject to the payment of a duty or tax.

Third. The court erred in holding that the island of Porto Rico is no part of the United States, and that the appellant and his property and business are not entitled to the protection of the Constitution of the United States.

Fourth. The decision and judgment of the court are in violation of the rights of the appellant in this, to wit:

(a) That the property and money of the appellant were taken from him without due process of law.

(b) That by article 1, section 8, clause 1, of the Constitution of the United States, it is provided that duties, imposts, and excises shall be uniform throughout the United States; that by the protocol and treaty of peace between the United States and Spain the island of Porto Rico became a part of the United States, and to impose a duty upon goods, wares, and merchandise, purchased by claimant in and brought from other parts of the United States, violates the claimant's constitutional rights, and denies to him the equal protection of the laws.

Sixth. The order issued by the President as Commander in Chief of the military forces, requiring the levying and collection of duties upon appellant's property by military officers is unconstitutional and void.

Seventh. Judgment should have been rendered in favor of the claimant and against the United States.

BRIEF AND ARGUMENT.

I.

THE CONSTITUTION OF THE UNITED STATES REACHES OVER EVERY PORTION OF THE NATIONAL DOMAIN, WHETHER IN THE FORM OF STATES, TERRITORIES, OR DISTRICTS, BECAUSE THIS CONSTITUTION PROVIDES FOR TERRITORIES AS WELL AS STATES. BY THE PROTOCOL AND TREATY OF PEACE BETWEEN THIS GOVERNMENT AND SPAIN, THE ISLAND OF PORTO RICO WAS CEDED TO AND ACCEPTED BY THE UNITED STATES. THERE WAS AN ABSOLUTE CHANGE OF TITLE AND SOVEREIGNTY. IT IS NO LONGER FOREIGN TERRITORY, BUT IS A PART OF THE UNITED STATES.

II.

OURS IS A CONSTITUTIONAL GOVERNMENT. EVERY PUBLIC OFFICER, WHETHER BELONGING TO THE LEGISLATIVE, EXECUTIVE, OR JUDICIAL DEPARTMENT, IS SUBJECT TO A WRITTEN CONSTITUTION, AND EVERY PERSON, HOWEVER EXALTED OR HUMBLE, OWES OBEDIENCE TO ITS PROVISIONS AND IS ENTITLED TO ITS PROTECTION.

III.

THE PRESIDENT OF THE UNITED STATES IS AN EXECUTIVE OFFICER ONLY. HE HAS NO RIGHT TO EXERCISE LEGISLATIVE FUNCTIONS. THE IMPOSITION BY EXECUTIVE ORDERS OF CUSTOMS DUTIES ON COMMERCE BETWEEN THE ISLAND OF PORTO RICO AND OTHER PARTS OF THE UNITED STATES, AFTER THE TREATY OF PEACE AND THE EXCHANGE OF RATIFICATIONS, IS UNAUTHORIZED AND VOID, AND THE COLLECTION OF SUCH DUTIES IS WITHOUT WARRANT OF LAW.

IV.

A GOVERNMENT WITHOUT LIMITATIONS WAS NEVER INTENDED BY THE FOUNDERS OF THE NATION. THEY SOUGHT TO ESTABLISH AND DID ESTABLISH A CONSTITUTIONAL REPUBLIC, WHICH FURNISHES A WRITTEN GUARANTEE OF PROTECTION TO ALL ITS INHABITANTS. THE IDEA THAT IN ONE PORTION OF THE COUNTRY THE EXECUTIVE AND LEGISLATIVE AUTHORITY IS SUBJECT TO RESTRICTIONS AND LIMITATIONS, AND THAT IN ANOTHER PORTION IT IS WITHOUT ANY RESTRICTION OR LIMITATION—THAT IN ONE PART A REPUBLICAN GOVERNMENT EXISTS AND IN ANOTHER PART AN UNLIMITED DESPOTISM—IS REPUGNANT TO THE THEORY UPON WHICH THE GOVERNMENT WAS FOUNDED. EVERY INHABITANT IS ENTITLED TO THE PROTECTION AFFORDED BY THE BILL OF RIGHTS.

In the discussion of the questions involved in this case, we are, to a large extent, necessarily compelled to go over the same ground and refer to the same authorities which were so ably presented to the court a few days ago by briefs and arguments in the cases of *Goetze and of Fourteen Diamond Rings* v. *United States*. We believe, however, that a further argument may be of advantage; for, the more these subjects are considered the stronger must grow the conviction that a grave error has been committed by the Government in its administration of affairs relating to the collection of revenues in the island of Porto Rico and the Philippines, and that a wrong has been done to the inhabitants—an error which we should make haste to correct before its dangerous consequences are felt in other parts of the Union.

I.

THE RIGHT OF THE UNITED STATES TO ACQUIRE ADDITIONAL TERRITORY IS NOW UNDISPUTED.

Whatever doubts may have existed in the early history of the country as to the right of the United States to acquire and govern territory, none will be found to exist at the present time. The fact that in the last ninety-seven years the national domain has nearly quardrupled; that lands and peoples have been brought into the Union, and that this expansion of territory has not only received the approval of the executive and legislative branches of the Government, but that it has been affirmed by the judicial department, leaves it no longer an open question and no time need be spent on that branch of the subject.

II.

PORTO RICO A PART OF THE UNITED STATES.

There was war between the United States and Spain. After various conflicts on land and sea Spain surrendered to the forces of the United

States and hostilities ceased. On the 12th day of August, 1898, a protocol was signed looking to permanent peace. By agreement, and also by command of the President, an order was issued suspending further military operations and there was an immediate and absolute cessation of hostilities. The war was over. Since then the island of Porto Rico has been, and now is, in a condition of peace, and the inhabitants have been in the enjoyments of civil rights, except as such rights have been affected by certain orders of the President and of the War Department and of the military forces of the United States, more particularly the orders for the collection of duties.

On the 10th day of December, 1898, the treaty of peace between the United States and Spain was signed at Paris. On the sixth day of February, 1899, it was ratified by the Senate of the United States and the President. On the nineteenth day of March it was ratified by the Queen Regent of Spain. On the eleventh day of April, 1899, ratifications were exchanged between the two governments and proclamation made. By these proceedings the ownership, government, authority, and jurisdiction over Porto Rico and the Philippine Islands completely changed. They were surrendered by Spain and received and accepted by the United States. Our title became perfect. After that time they were as absolutely a part of the United States as Ohio or New York. There is no halfway ground; no such thing as divided sovereignty; no such thing as the islands being partly in and partly out—partly Spanish and partly American.

ADJUDICATED CASES.

Fortunately this question has been authoritatively settled in this court by a large number of decisions.

The case of *Loughborough* vs. *Blake*, 5 Wheat., 317, presents a strong and clear statement of the proposition for which we contend. A citizen of the District of Columbia resisted the collection of a tax upon the ground that Congress had no power to levy a direct tax upon the inhabitants of the District. It became important to know what relation the District sustained to the Union—whether it was a part of the United States or not.

The learned Chief Justice, in the course of his opinion, says:

"The 8th section of the 1st article gives to Congress the power to lay and collect taxes, imposts, and excises, for the purposes thereinafter mentioned. This grant is general, without limitation as to place. It consequently extends to all places over which the Government extends. If this could be doubted, the doubt is removed by the subsequent words which modify the grant. These words are, but all duties, imposts, and excises, shall be uniform throughout the United States. It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power, then, to lay and collect duties, imposts, and excises may be exercised, and must be exercised throughout the United States. Does this term designate the whole or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which is composed of States and Territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland

or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other. Since then the power to lay and collect taxes, which include direct taxes, is obviously coextensive with the power to lay and collect duties, imposts, and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States."

One thing is made perfectly clear by this decision, and that is that States, Territories, and districts are all alike parts of the United States—parts of the great American empire. And it is further made clear that uniformity in the imposition of imposts, duties, and excises is to be observed throughout the American empire.

There are many reasons why the opinion of Mr. Chief Justice Marshall in this case should be entitled to great weight. It was an early case, having been decided in 1820, at a time when the early history of the country was fresh in the minds of public men, and the decision was rendered not only by a great judge, but by one who himself was present at the formation and founding of the Government, and it was the first important decision upon this subject. He knew why the Constitution was created and the reasons for its creation; he knew that it not only sheltered the people of the States, but all people who might live under its jurisdiction and authority.

In the case of *Cross* vs. *Harrison*, 16 Howard, 164, which was decided in 1853, there is a full and exhaustive discussion of the subject now under consideration. California was ceded to the United States. The act of session was contained in the treaty of peace between the United States and Mexico, which took place February 3d, 1848. That territory came to us in exactly the same way that Porto Rico came, by treaty, after a war. Immediately upon the signing of the treaty persons bringing merchandise into California were required and compelled to pay a duty on their goods—that, too, before any port of entry was established or collector appointed. Suit was brought to recover back the duties so paid. The case was carried to this court. The effect of the decision here is that California became a part of the United States the moment the treaty of peace was signed, and that merchants bringing goods into California could be compelled to pay duty even though no port of entry was established or collector appointed.

The following appears in the opinion of the court (p. 197):

"By the ratification of the treaty California became a part of the United States; and as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage."

Further on in the opinion occurs the following (p. 198):

"The right claimed to land foreign goods within the United States at any place out of a collection district, if allowed, would be a violation of that provision in the Constitution which enjoins that all duties, imposts, and excises shall be uniform throughout the United States. Indeed, it must be very clear that no such right exists, and that there was nothing in the condition of California to exempt importers of foreign goods into it from the pay-

ment of the same duties which were chargeable in other ports of the United States. As to the denial of the authority of the President to prevent the landing of foreign goods in the United States out of a collection district, it can only be necessary to say, if he did not do so it would be a neglect of his constitutional obligation 'to take care that the laws be faithfully executed."

"We will here briefly notice those objections which preceded that which has been discussed. The first of them, rather an assertion than an argument, that there was neither treaty nor law permitting the collection of duties, has been answered, it having been shown that *the ratifications of the treaty made California a part of the United States, and that, as soon as it became so, the Territory became subject to the acts which were in force to regulate foreign commerce with the United States, after those had ceased which had been instituted for its regulation as a belligerent right.*"

The case contains many other things which are of value, but the foregoing bears directly upon the point immediately under discussion.

It is contended, however, that the case of *Fleming* vs. *Page*, 9th Howard, 614, which was decided by this court in 1849, holds to a different doctrine. We think that a careful examination of the facts in the Fleming case will show that the decision there made, properly understood and in the light of the facts, is not inconsistent with our contention; but, whether this be so or not, when it is remembered that the case of *Cross* vs. *Harrison* was decided by the same court at a later day, and that Chief Justice Taney concurred in the opinion, it may fairly be inferred that in any point where the cases are in conflict the judgment in *Cross* vs. *Harrison* should prevail.

The case of *Shively* vs. *Bowlby*, 152 U. S., p. 1, concerned the title in certain lands below high-water mark in the Columbia River, in the State of Oregon, and required an examination of the extent of the title of the United States in tide-water lands.

The opinion of the court is an exhaustive and careful review of the whole subject. On page 57, in Mr. Justice Gray's opinion, is the following:

> "Upon the acquisition of territory by the United States, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States for the benefit of the whole people and in trust for the several States to be ultimately created out of the territory."

Here the United States are clearly made to embrace all the lands over which its authority extends. The doctrine announced in the above case is approved and reasserted by this court in the case of *Morris* vs. *The United States*, 174 U. S., page 196.

The Constitution is the supreme law of the land, State and Territorial.

Since the Constitution extends to the farthermost territory of the United States and is the fundamental law thereof, the question arises as to *when* the Constitution extends to newly acquired territory.

Our contention is that when and at the time the newly acquired territory is severed from the sovereignty which has held it and becomes possessed by the United States the sovereignty of the United States extends thereto, and that that sovereignty abides there by virtue of the Constitution.

At the time that California became lost to Mexico it became a part of the United States. The port of entry of San Francisco ceased to be a foreign port at that very moment. The tariff laws of the United States, borne thither by the Constitution, immediately attached, and the tariff duties levied by these laws throughout the United States compelled the payment of duties on foreign goods imported at the port of San Francisco.

It was insisted by some that these duties could not be levied at that port, on the ground that our Constitution and laws did not extend to the port until direct action thereon by Congress, and Alexander Cross, William L. Hobson, and William Hooper, trading under the name and style of Cross, Hobson and Company, objected to paying tariff duties to the United States on goods imported by them.

The sovereignty of the United States had been extended over the port of San Francisco February 3, 1848, by the treaty of peace with Mexico, and from that date the President, through the War Department, collected duties upon goods imported by the above-named parties from foreign countries to the port of San Francisco.

These people paid the duties exacted by the tariff laws then existing in the United States under protest, and then sued the collector of the port thereunto authorized by the War Department for recovery of the duties so paid.

The facts are all set out in the aforesaid case of *Cross* vs. *Harrison*, 16 Howard, 164, and the Supreme Court, speaking through Justice Wayne, said:

> "By the ratification of the treaty California became a part of the United States; and as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage. * * *
>
> "This government de facto will, of course, exercise no power inconsistent with the provisions of the Constitution of the United States, which is the supreme law of the land. For this reason no import duties can be levied in California on articles the growth, produce, or manufacture of the United States, as no such duties can be imposed in any part of our Union on the productions of California. Nor can new duties be charged in California upon such foreign productions as have already paid duties in any of our ports of entry, for the obvious reason that California is *within the territory of the United States.*"

This case has been cited with approval as follows:

> The Army Warrick Case, 2 Sprague, 134.
> *Hamilton* vs. *Dillon*, 21 Wallace, 87.
> *New Orleans* vs. *Steamship Co.*, 20 Wallace, 394.
> *Coleman* vs. *Tennessee*, 97 U. S., 536.
> *Dow* vs. *Johnson*, 100 U. S., 183.

"Bound and privileged" is the language above given in the case of *Cross* vs. *Harrison*, "bound" to obey the Constitution and laws of the United States, and "privileged" to have the benefit and protection of that Constitution and those laws, and "instantly bound and privileged" thereunto thereby.

Subject to the limitations of the treaty by which the United States acquires territory, the Constitution and laws of the United States

enter upon and possess such territory immediately upon its acquirement.

The laws relating to the collection of duties on imports extend throughout the dominion of the United States, and no part of our territory and no citizen of the United States residing within our territorial domain may be treated as foreign. The reason why Cross & Co. could *not* recoup the duties collected of them is the very reason why the appellant *can*.

In the President's message to the present Congress the Chief Executive affirms that the sovereignty of the United States has already attached to the new possessions.

He states—as to the Philippines:

> "Until Congress shall have made known the formal expression of its will, I shall use the authority vested in me by the Constitution and the statutes to uphold the sovereignty of the United States in those distant islands."

Here is the whole subject in a nut shell:

The Constitution and statutes are there now, and, by their authority, the President declares he will "uphold the sovereignty of the United States" thus extended.

Congress may legislate for this territory and make all "needful rules and regulations" therefor—for the same reason that the President now upholds our sovereignty, namely—by virtue of the Constitution of the United States.

In the case of *Loughborough* vs. *Blake*, 5 Wheaton, 317, the Supreme Court, through the great Chief Justice Marshall, said:

> "The power, then, to lay and collect duties, imposts, and excises may be exercised and *must* be exercised throughout the United States."
>
> "Does this term designate the whole or any particular portion of the American Empire? Certainly this question can admit of but one answer.
>
> "It is the name given to our great Republic, which is composed of States and Territories.
>
> "The District of Columbia or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other."

The Constitution decrees a uniformity of duties throughout the territory of the United States.

The exact language is as follows:

> "All duties, imposts, and excises shall be uniform throughout the United States."

And in the Loughborough case, last above cited, the court said:

> "The power, then, to lay and collect duties, imposts, and excises may be exercised and *must be exercised* throughout the United States."

There is, therefore, no escape from the universality of the Constitution unless the term *United States* means only the States of the American Empire.

But in the same case we have the definition of the term "United States," so that we may be sure that this name applies to the entire domain of the Great Republic.

It is also decided in *Cross* vs. *Harrison* that those who are subject to the jurisdiction of the United States are citizens thereof.

Where is the omnipotence of Congress in view of the Constitution and these decisions?

The sole duty and power of Congress is to legislate *within* the Constitution. Congress can not legislate for foreign territory.

The National Legislature has no existence but for the Constitution. In the very nature of things it is limited to the instrument which gave it birth and life.

In the case of *Murphy* vs. *Ramsey*, 114 U. S., 15, the court said, as to the legislation for territory of the United States:

> "In the exercise of this sovereign dominion they (the Territories) are represented by the Government of the United States, to whom all the powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the Constitution or are necessarily implied by its terms."

Congress is not omnipotent as to the Territories. We have in the Reynolds case, 98 U. S., 162, a decision of the Supreme Court that it is not omnipotent:

> "Congress can not pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation."

If the Constitution controls Congress in one instance it controls it in all respects.

"Needful rules and regulations" is the extent to which Congress may go.

Whenever, therefore, the sovereignty of the United States extends over new lands by reason of a treaty of cession, such lands become territory of the United States subject to constitutional regulations with respect to United States territory not included within a State of the Union.

Territory is of the domain of a country, and subject to the laws which control it in matters of government. Territory is always encumbered with the rights of persons as well as the rights of things, because the inhabitants of the territory are not property. They are subjects of the Government, whose rights are paramount to property in the territory in which they reside. While, by a certain definition of the term "property," the actual soil of the territory may be deemed the subject of barter and sale, the inhabitants thereof must always claim and have the reasonable protection of the Constitution and laws of the Government which holds them.

If, therefore, the inhabitants of newly acquired territory are to be deemed citizens of the country acquired, they have rights which Congress is bound to respect, which respect is compelled by the Constitution under which Congress enacts its laws.

In this treaty with Spain it is expressly stated that the "natives of the peninsula residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty * * * shall be held

to have adopted the nationality of the territory in which they reside" unless they elect to go with Spain.

Spain has relinquished and ceded her sovereignty to the Government of the United States, and when this is accomplished Porto Rico is of the sovereignty of the United States of America. To what other entity has this sovereignty been relinquished and ceded? Has this sovereignty become lodged in the President, and not yet reached the Government of the United States? Can it be suspended in mid-air? There is no statement in this treaty that the transfer of sovereignty stops short of the United States of America until something else is done. The act of transfer is complete.

In the case of the Capital Traction Company *vs.* Hoff, 174 U. S., 5, it was held that:

"The Congress of the United States, being empowered by the Constitution 'to exercise exclusive legislation in all cases whatsoever' over the seat of the National Government, has the entire control over the District of Columbia for every purpose of government, national and local. It may exercise within the District all legislative powers that the legislature of a State might exercise within the State, and may rest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them, as it may see fit, *so long as it does not contravene any provision of the Constitution of the United States.*" See also—

Kendall vs. *The United States*, 12 Peters, 524.
Mattingly vs. *District of Columbia*, 97 U. S., 687.
Gibbons vs. *District of Columbia*, 116 U. S., 404.
National Bank vs. *Yankton*, 101 U. S., 138.

In the City of Panama Case, 101 U. S., 453, at page 460, the Supreme Court holds that:

> "Our Constitution, in its operation, is coextensive with our political jurisdiction."

In *Cohens* vs. *Virginia*, 6 Wheaton, 424, it is held that "in the enumeration of the powers of Congress, which is made in the eighth section of the first article, we find that of exercising exclusive legislation over said District as shall become the seat of government. This power, like all others which are specified, is conferred on Congress *as the legislature of the Union;* for strip them of that character they would not possess it. In no other character can they be exercised. In legislating for the District they necessarily preserve the character of the legislature of the Union; for it is in that character alone that the Constitution confers on them the power of exclusive legislation."

And this decision goes so far as to say that in this exclusive legislation is only such legislation as the Constitution authorizes.

Our sovereignty is a constitutional sovereignty. We could not acquire property or territory except by authority of the Constitution. Our Government exists by virtue of the Constitution. It can not be said that there is lodged somewhere, in the archives of theory, above and beyond the Constitution, or back of it, some governmental right to seize and hold territory by force of arms, and at the will or caprice of this supposed power.

There is no place in our system of government for an executive above, beyond, or behind the Constitution—no place for an army and

navy not authorized by the Constitution—nor for a legislature not bound to the terms of that Constitution.

The general consensus of the opinions of the Supreme Court is to the effect that the personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of the government, State and national.

Webster vs. *Reid*, 11 Howard, 437.
Reynolds vs. *United States*, 98 U. S., 154.
National Bank vs. *Yankton*, 101 U. S., 138.
Murphy vs. *Ramsey*, 114 U. S., 44.
Talbot vs. *Silver Bow Co.*, 139 U. S., 441.
Am. Pub. Co. vs. *Fisher*, 166 U. S., 464.
Springville vs. *Thomas*, 166 U. S., 707.

The last-cited cases relate to the right of the United States citizens, not residents of States of the Union, to trial by jury; and these cases hold that Congress is bound to provide trial by jury for every United States citizen residing within the territory of the United States; that only for crime committed on the high seas may the criminal be tried without a jury, as a matter of right. This is a further evidence of the universality of the Constitution and its supremacy as to Congressional legislation in the outlying territory of the United States.

THE RIGHT OF TRIAL BY JURY.

This is another class of cases, therefore, which bear upon this subject, and which are of great weight and value. This right of trial by jury was regarded by the founders of the Government as of the utmost importance. They held it to be essential to the preservation of their liberties; hence a declaration of this right was incorporated into the Constitution. They believed, and had the right to believe, that this provision was for the benefit of all the people of the United States, wherever they might reside, whether in the States, Territories, or districts. There were those, however, who were of a different opinion, and contended that this great right belonged exclusively to the inhabitants of the States, and not otherwise. This, of course, shut out the District of Columbia. The case of *Callon* v. *Wilson*, 127 U. S., 540, was brought into this court in 1887 for determination.

In that case an information had been filed by the United States in the police court of the District charging Callon with the crime of conspiracy. He was found guilty and sentenced to pay a fine of twenty-five dollars, and upon forfeiting the payment to suffer imprisonment in jail for thirty days. He appealed to the supreme court of the District, but having subsequently withdrawn his appeal, and having refused to pay the fine imposed upon him, he was committed to the custody of the marshal in order that the sentence might be carried out. He contended that he was restrained of his liberty in violation of the Constitution. He had demanded a trial by jury, which was denied to him, and a trial was had before the court without the intervention of a jury, and the trial resulted in conviction, as before stated.

It was contended by the Government that the Constitution does not require that the right of trial by jury shall be secured to the people of the District of Columbia. It was further contended by the Government that the guaranty of trial by jury has never been understood to embrace petty offenses.

Mr. Justice Harlan delivered the opinion of the court, and in the course of such opinion said (p. 547):

"It is contended by the appellant that the Constitution of the United States secured to him the right to be tried by a jury, and that right having been denied, the police court was without jurisdiction to impose a fine upon him, or to order him to be imprisoned until such fine was paid. This precise question is now, for the first time, presented for determination by this court. If the appellant's position be sustained, it will follow that the statutes (Rev. Stat., Dist. Col., sec. 1064) dispensing with a petty jury in prosecutions by information in the police court, is inapplicable to cases like the present one.

"The third article of the Constitution provides that the trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crime shall have been committed, but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

"The fifth amendment provides that no person shall be deprived of life, liberty, or property without due process of law. By the sixth amendment it is declared that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

"The contention of the appellant is that the offense with which he is charged is a 'crime' within the meaning of the third article of the Constitution, and that he was entitled to be tried by a jury; that his trial by the police court, without a jury, was not 'due process of law' within the meaning of the fifth amendment; and that in any event, the prosecution against him was a 'criminal prosecution,' in which he was entitled by the sixth amendment to a speedy and public trial by an impartial jury.

"The contention of the Government is that the Constitution does not require that the right of trial by jury shall be secured to the people of the District of Columbia; that the original provision, that when a crime was not committed within any State 'the trial shall be at such place or places as the Congress may by law have directed,' had, probably, reference only to offences committed on the high seas; that in adopting the sixth amendment the people of the States were solicitous about trial by jury in the States and nowhere else, leaving it entirely to Congress to declare in what way persons should be tried who might be accused of crime on the high seas, and in the District of Columbia, and in places to be thereafter ceded for the purposes, respectively, of a seat of government, forts, magazine, arsenals, and dockyards; and, consequently, that that amendment should be deemed to have superseded so much of the third article of the Constitution as relates to the trial of crimes by jury.

"Upon a careful examination of this position we are of opinion that it can not be sustained without violence to the letter and spirit of the Constitution."

Further on in the opinion of the court is the following (p. 549):

"And as the guarantee of a trial by jury, in the third article, implied a trial in that mode, and according to the settled rules of the common law, the enumeration in the sixth amendment of the rights of the accused in criminal prosecutions is to be taken as a declaration of what those rules were, and is to be referred to the anxiety of the people of the States to have, in the supreme law of the land, and so far as the agencies of the General Government were concerned, a full and distinct recognition of those rules as involving the fundamental rights of life, liberty, and property. This recognition was demanded, and secured, for the benefit of all the people of the United States, as well as the permanently or temporarily residing in the District of Columbia as those residing or being in the several States. There is nothing in the history of the Constitution, or the original amendments, to justify the assertion that the people of this District may be lawfully deprived of the benefit of any of the constitutional guarantees of life, liberty, and property; especially of the privilege of trial by jury in criminal cases. In the draft of a constitution, reported by the committee of five on the 6th of August, 1787, in the convention which framed the Constitution, the fourth section of Article XI read: 'The trial of all criminal offences, except in cases of impeachment, shall be in the States where they shall be committed, and shall be by jury.' (I Elliott Deb., second edition, 229.) But that article was, by unanimous vote, amended to read: 'The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crime shall have been committed; but, when not committed within any State, then the trial shall be at such place or places as the legislature may direct.' (Id. 270.)

"The object of thus amending the section, Mr. Madison says, was to provide for trial by jury of offenses committed out of the State (3 Madison Papers, 144). In *Reynolds* v. *U. S.*, 98 U. S., 145–154, it was taken for granted that the sixth amendment of the Constitution secured to the people of the Territories the right of trial by jury in criminal prosecutions, and that it had been previously held, in *Webster* v. *Reid*, 11 Howard, 437, 460, that the seventh amendment secured to them a like right in civil actions at common law. We can not think that the people of this District have in that regard less rights than those accorded to the people of the Territories of the United States."

We have quoted at considerable length the opinion delivered in this case, for the reason that it not only decides a grave constitutional question, but that it states strongly and clearly the foundation upon which the decision of the court rests. It carries out and expresses the idea which we believe was entertained by the great body of the people of the United States, and by the framers of the Government, as to what was intended to be accomplished in the formation of the Constitution. There was no thought upon the part of the framers of that instrument of allowing the rights of "the people" to be a mere matter of chance; but they declared and intended to set forth in plain and unequivocal language the rights of all the people, so that every inhabitant could look into the instrument and find for himself the

guarantees of protection; and it was never intended that Congress, or the President, or anybody else should override these plain declarations set forth in the bill of rights.

The case of *Thomson* vs. *United States*, 170 U. S., 343, involved the question of the legality of a jury of eight persons in the State of Utah, and necessarily a discussion of the rights of a party charged with a crime committed before Utah was admitted into the Union, and it was held that the Constitution of the United States carries into the Territories the right of trial by jury.

The court, through Mr. Justice Harlan, says (p. 346):

> "That the provisions of the Constitution of the United States relating to the right of trial by jury in suits at common law apply to the Territories of the United States is no longer an open question. (*Webster* v. *Reid*, 11 How., 437, 460; *American Publishing Co.* v. *Fisher*, 166 U. S., 464, 468; *Springville* v. *Thomas*, 166 U. S., 707.) In the last-named case it was claimed that the Territorial legislature of Utah was empowered by the organic act of the Territory of September 9, 1850, 9 Stat., 453, c. 51, sec. 6, to provide that unanimity of action on the part of jurors in civil cases was not necessary to a valid verdict. This court said: 'In our opinion the seventh amendment secured unanimity in finding a verdict as an essential feature of trial by jury in common-law cases, and the act of Congress could not impart the power to change the constitutional rule, and could not be treated as attempting to do so.'"

The court also refers to the case of *Callen* vs. *Wilson*, and recites with approval that opinion.

The plain effect of these decisions is that the Constitution, by its own force, carries the right of trial by jury to every person over whom the authority of the Government extends.

UNLIMITED POWER.

The Attorney-General, in his brief in the Goetze case *et al.*, contends that the "ordinary and necessary sovereign powers of an independent nation" demand an unlimited hand in the government of territory outside of the States of the American Union; that but for this unlimited power this Government would not be able to exercise the functions of an independent nation.

This position is controverted and denied by appellant, and thereupon issue is joined.

Mr. McKinley is the President of the United States—the President of its territory and its people.

He is not the President of any other territory or people, and he is the despot of no people and no territory. He was never elected nor commissioned the despot of any body or any thing.

The Congress is the Congress of the United States—the Congress of the territory and people of the United States. It is not the Congress of any other territory or people.

It is omnipotent nowhere on the face of the earth. It was created by the people of the United States under a Constitution specifically pointing out its powers and duties. It exists by virtue of that Constitution, as does also the Presidential office.

It is omnipotent nowhere. The only omnipotent thing this side of heaven is the Constitution formulated by the fathers out of times which proved the necessity of providing against despotism in the Presidential office and against the omnipotence of men representing the people of the United States.

Our Government is one of "checks and balances," so to speak.

The President is endowed with power to execute the laws of the United States, but as to all persons whom he calls to his aid in the discharge of this power he must have the approval of the Senate. In making treaties he must have the cooperation of the Senate. The Constitution points out the manner in which he shall administer his high trust. Congress alone may declare war, and, with the sanction of the President, shall make the laws by which the country shall be governed. These laws and rights are designated by the Constitution of the Republic. These laws and rights relate to a republic, not to a despotism. Despotic power and omnipotence are not among the prerogatives of the President, or of Congress, or of both together.

The courts are composed of jury and judge. It takes thirteen men to sit in judgment upon a case in which the rights of the American citizens are considered.

The theory of the Attorney-General is that the territorial possessions of the United States of America necessarily belong to the domain of untouched things, and is appropriated by an independent government as a man would appropriate a swarm of bees from a forest. He reduces territorial possessions to mere property, and declares that the inhabitants thereof have no rights which an independent government is bound to respect.

In short, he contends that monarchial powers must be possessed by all independent governments—that such powers are absolutely necessary to the performance of the duties of independent government. This leads to the conclusion that the Declaration of Independence extended only to the thirteen original colonies, which eventually became the original States, and that the act of separation and independence by which the boundaries of the United States were fixed at the Mississippi River is mere surplusage. In other words, that our Government, instead of being the "land of the free," is the most unlimited of despotisms.

No one can find fault with the Attorney-General's candor, however much we may differ from him, for it must be acknowledged that to sustain the position taken by the Government in denying to the new possessions a United States status the Government of the United States must be a despotism as to all territory outside of the States.

How different is the claim of Judge Cooley in his "Principles of Constitutional Law," wherein he says (pp. 37 and 38):

> "The securities for personal liberty which are incorporated in the Constitution were intended as limitations of its power over any and all persons who might be within its jurisdiction anywhere, and that citizens of the Territories as well as citizens of the States may claim the benefit of their protection." * * *

The people who live in the District of Columbia, Arizona, or Alaska are citizens of the United States as completely as the people of Ohio or Indiana.

There is never a jury selected in the supreme court of the District

of Columbia but the members thereof are first asked if they are citizens of the United States.

A man may be a citizen of the United States and yet reside in outlying territory of the United States. Residence in a State is not necessary to United States citizenship. The term "United States" means the United States Government, composed of States and outlying territory, and embracing people residing in both the States and outlying territory, as we contend.

The right of suffrage is not the test of citizenship. The right to vote is not inalienable, nor is it necessary for "life, liberty, and the pursuit of happiness."

There never has been a time, under our constitutional history, that there has not been outlying territory—territory not within the limits of any State. Our Constitution took into account the outlying territory as well as the States, for it provided for its government as surely as it did for the administration of the affairs of a State.

The Attorney-General seems to fear that the Government will be impotent to discharge the functions of an independent government if it does not possess this despotic power.

We have no such fear. The independence of the United States does not depend upon despotic power. It is a republic, not a monarchy. It was never intended that it should exercise the powers of a monarchy. Its founders believed in a government which obtained its functions and powers from the people who created and fashioned it—that the consent of the governed, and not the will of the governor, should obtain.

In this view, and to this end, the Constitution provided for the government of territory as well as the government of States. That Congress is endowed by the Constitution with power to make the needful rules and regulations respecting the territory of the United States was decided, as to the Territory of Florida, in *Insurance Co.* vs. *Canter*, 1st Peters, 511, in the following language:

> "In the meantime Florida continues to be a Territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property belonging to the United States."

But, because the Constitution gives Congress this power, Congress is not thereby given unlimited despotic power.

This authority is bounded by the limits fixed for the Republic.

Our Constitution is the source of all power in the Republic wherein the inalienable rights of men are guaranteed.

From it the Legislative, Executive, and Judicial branches derive their inspirations.

The Constitution is as potent in a Territory as in a State.

It extends its benefits to the Territory as well as the State. It guarantees protection to life, liberty, and property throughout the entire domain of the United States.

Congress, the Chief Executive, and the courts must obey its mandates, and all are sworn to support it.

Congress can enact no law but in pursuance of the Constitution, whether with reference to a State or to the outlying territory of our domain.

To say that Congress is superior to the Constitution in any part of

our domain is to assert an absurdity, for there is no Congress except by the Constitution, and there can be no creature of the Constitution greater than itself.

The creature can not be greater than the creator.

Congress is not more supreme in the Territories than it is in the States, in fact; for it derives its authority to legislate in either case from the same source, and owes allegiance to this source in the enactment of laws for the outlying territory as well as for the States, and Congress is not omnipotent anywhere.

The authority to make all needful rules and regulations for the territory of the United States does not elevate Congress above the Constitution.

The so-called supremacy of Congress consists in the enactment of laws for the Territories which the State legislatures pass for regulation of the domestic affairs of the State.

IV.

THE TRUE MEANING OF THE TERM UNITED STATES—GOVERNMENT'S DEFINITION ERRONEOUS.

In the case of Fourteen Diamond Rings, heard before this court a short time ago, the Attorney-General in his brief, page 4, laid down the following proposition:

> "The Government contends and the circuit court so held, that this act applied to merchandise imported from Porto Rico and the Philippine Islands after their cession to the United States exactly as it did before; that within the meaning of the act these countries are to be regarded as foreign, belonging to, but not forming, in a domestic sense, a part of the United States."

On page 127 of the same argument the following proposition is asserted:

> "The clause of the Constitution which declares that duties, imposts, and excises shall be uniform throughout the United States does not apply to nor govern these cases, because the term 'United States,' as they are used, means only the territory comprised within the several States of the Union, and was intended only for their benefit and protection, and not for the benefit or protection of outside territory belonging to the nation; in the latter sense duties on imports from these islands are uniform throughout the United States, because they are uniformly imposed at every port in the United States, so that there is no preference given to the ports of one State over those of another, nor is any inequality between the several States created."

Thus is the position of the Government in this controversy made perfectly plain. It is that the Constitution of the United States does not extend over the territory recently acquired, nor, indeed, over any territory outside of that which is included in the organized States; that the term "United States," as mentioned in that instrument, means only the forty-five Commonwealths.

What are the consequences of such a construction?

Taking this as the proper definition, it follows that the District of Columbia, New Mexico, Arizona, Oklahoma, Alaska, Porto Rico, the

Hawaiian and the Philippine islands are none of them any part of this country, and that the Congress of the United States and the President, in their treatment of the people of these places are not operating under the Constitution, but that they are law into themselves, unrestricted by any of the provisions of that instrument. It follows that the people of Porto Rico are absolutely without any protection whatever, except as Congress may see fit to give them.

It is admitted that every inhabitant of the States of "United States" is entitled to the right of trial by jury; that as to him no bill of attainder or *ex post facto* law can be passed; that he is secure in his property from unjust and unreasonable searches and seizures; that he shall not be convicted of treason except upon the testimony of two witnesses, and that no attainder of treason shall work corruption of blood or forfeiture of estate.

It has been supposed heretofore that all these things were the constitutional right of every American citizen, and every inhabitant, and that Congress could not change or take them away. It is now contended, however, the inhabitants of Porto Rico and the other Territories can claim no such rights or privileges; that the Constitution gives them no protection. The inhabitants of these countries may be tried, sentenced, and executed without indictment, judge, or jury. Their property may be confiscated; they may be subjected to the operation of *ex post facto* laws. They may be persecuted and oppressed, and they have no redress. If they appeal to the Constitution of the United States they are told that the Constitution is not for them. If they are accused of crime and demand a trial by jury they are informed that a jury is not for them, that they are foreigners and aliens. They may bear the burdens, but can not enjoy the blessings of a free government. All their rights, privileges, and immunities are dependent solely upon the will of the President and Congress.

This is a most dangerous doctrine, and fraught with unnumbered evil consequences.

These people are no longer Spanish subjects; they can claim no protection there. Suppose Congress refuses to act, or, acting, establishes for them a monarchical form of government, where the people are divided into two classes—nobles and serfs. In one case they would be without any government at all, and in the other case they would be living under institutions and laws totally at variance with the principles and spirit of a republican government.

When the Spanish war broke out it was understood that the United States engaged in it as a work of humanity, and the idea was spread broadcast among the nations that American institutions, American civilization, American laws, and American liberty were to be extended to whomsoever might come within our jurisdiction and authority. It was with this belief and under this promise that the inhabitants of Porto Rico welcomed our armies and saluted our flag. They said: "'Your people shall be our people,' and your laws and institutions shall be ours. Henceforth our island shall be a part of your country, and our interest and welfare are committed to you."

The theory of our Government is that duties are to be levied and collected upon the products of *foreign* countries. Until now, who ever dreamed that we could collect duties upon our own people. It is now contended, however, that these are not our own people, for the reason that they do not live within the boundaries of some one of the forty-

five organized States. As before stated, this rule leaves out the District of Columbia, all the Territories, and the Hawaiian, Porto Rico, and Philippine islands. Would Congress be authorized to levy a tariff duty upon the products of New Mexico? The sheep and wool industries of that section are enormous. The Dingley law levies a tax on foreign wool. Could the United States levy a similar tariff on the wool product of New Mexico? Could the miners of Arizona be made to pay a duty? Could you levy a duty upon the merchandise of the citizens of the District of Columbia? Maryland and Virginia were two of the original thirteen States. The Constitution of the United States extended over them and their inhabitants. In 1789–90 the District of Columbia was formed out of territory belonging to Virginia and Maryland, and was placed under the exclusive control of Congress. Was the Constitution torn open so as no longer to cover the District? Did the inhabitants here cease to be American citizens? Were the guarantees of the Constitution withdrawn from them? Could you establish titles of nobility here? Could you subject our people to the operation of *ex post facto* laws? Could you compel them to submit to unreasonable searches and seizures? They *were* inhabitants and citizens of the United States when the District was formed. Did they become foreigners and aliens as soon as it was done? Do we who live under the shadow of the Capitol itself belong to a foreign country, and are we no part of the United States? Are the White House, the State, Treasury, and other Executive Departments located upon foreign soil? Has the Government moved out of the United States for the purpose of carrying on its executive functions?

If the United States embraces only organized commonwealths, as asserted by the Attorney-General, this conclusion is inevitable, and the American Republic presents to the world the unique exhibition of a Government partly domestic and partly foreign, with all of its executive machinery operating outside of its constitutional and territorial limits.

According to the theory of the advocates of the Porto Rican tariff the American Congress, composed of the Senate and House of Representatives, is holding its sessions and enacting laws outside of the country, and if not on foreign soil, at least upon land over which the Constitution does not extend.

Oklahoma is a Territory; it was settled largely by citizens from Ohio and the Middle and Eastern States. Did these people, when they left Ohio and New York, cease to be citizens of the United States and become inhabitants of a foreign country? While in the States they were under the Constitution and protected by it. Did they go beyond its protection the moment they crossed over the Oklahoma line? Does the fact that Congress has power to dispose of and make all needful rules and regulations concerning Territories and other property change the conditions of things so that an American citizen becomes an alien as soon as he steps beyond the borders of his State?

These illustrations will serve to show to what absurd conclusions and results the doctrine that the Constitution, by its own force, protects only the States; and what an almost ridiculous position the country will occupy in the eyes of its own people and the world. There is but one safe and solid ground on which to stand, and that is that all territory belonging to the United States, whether in the form of States, Territories, or districts, is a part of this country. In the language of

Chief Justice Marshall, it is a part of the American empire. When a citizen of this Government leaves his home and goes away to New Mexico, Alaska, Porto Rico, or Manila, he is still amenable to the National Constitution, bound to yield it obedience, and is clothed with the protection and security which it affords.

It is contended, however, that the action of the Government in regard to Porto Rico was in the interest of these people. We have no doubt as to the philanthropic motives which governed the public authorities. But this does not change the principle, nor make it less dangerous and hurtful. If you can impose duties upon Porto Rico, then you may do the same thing with Alaska, New Mexico, or any other strip or part of land which we now have or may hereafter acquire, so long as the same is not fashioned into a State. It was stated upon the floor of Congress, and has also been asserted on other occasions, that the majority of that body desired to establish and emphasize the fact that Congress has sole and exclusive control over the Territories and all newly acquired possessions, and it was unwilling to surrender that right. If this means that Congress may legislate for the local government of these possessions, we admit it; but if it means that Congress may do exactly as it pleases with the people of these localities, regardless of the Constitution, we deny it. The Constitution in and of itself never gave local government to any State or Territory; but it does carry into and over every State and Territory certain great cardinal rights, and Congress, when it comes to legislate for these localities, does it subject to these constitutional provisions.

One would think, to hear the arguments advanced by the Government, that there are no restrictions or limitations of any sort upon Congress or the President, so far as the Territories are concerned; they may give to Alaska an absolute monarchy; that may give to the Hawaiian Islands a republic; that they may give to Porto Rico such a government as Weyler would provide; they may give to the Philippines a former government after the plan of Turkey and China; they may establish a republic in one part and a monarchy in another; they may deny to the unfortunate inhabitants of these islands all the recognized rights and privileges which characterize the codes of civilized nations. In short, they may restore all the relics of barbarism, and there is no power on earth to stop or control them. It is no answer to this to say that the Congress is too enlightened and the President too merciful to commit such acts of tyranny and oppression. That does not change the question. We contend that no such right exists; that Congress in its government of the Territories is itself subject to constitutional limitations, and that the people of these Territories or colonies are protected by these limitations, and that they may themselves appeal to that instrument for protection.

When Congress legislates for any of these new possessions it is legislating for our own and not a foreign country. Its right to legislate at all is based upon the fact that these regions belong to and are a part of the United States. It is a source of pride and satisfaction that the provisions of our organic law are not confined to States alone, but are broad and strong enough to shelter and protect all people wheresoever living who yield obedience to its authority.

The definition of "the United States" given by the Attorney-General, as heretofore stated, necessarily excludes all the Territories and the District of Columbia, leaving them without constitutional protection.

The force of our criticism of this definition is sought to be broken by the fact that Congress has already, by the enactment of certain laws, given to the people of the Territories and to the District local governments. We respectfully submit that this does not meet the issue. On the contrary, it serves to show how dangerous and indefensible this doctrine of the impotency of the Constitution and the absolute supremacy of Congress is. All laws passed by Congress are subject to repeal. An act may be passed to-day and set aside to-morrow. If Congress is supreme and unrestricted by the Constitution, in what a critical position are the Territories placed; for it may, according to its pleasure, repeal all the statutes heretofore enacted and destroy all the local governments heretofore established. It may substitute for a Territorial government, now existing, other governments wholly different in form and character. The people of these localities are thus placed at the mercy of Congress and the President; the authority of the Constitution is enlarged or diminished according as it may be extended over or withdrawn or excluded from the Territories. The Congress was created by the Constitution; now, however, the creature becomes greater than the creator. They would have us believe that the Constitution follows Congress, and not Congress the Constitution. How much safer and better ground it is to take that the Constitution came first into being; that it is over all, extending the great Bill of Rights to every portion of the national domain, and giving its protection to all classes and conditions of people.

THE TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN AND THE PRACTICE OF THE GOVERNMENT.

It has been contended by the Government through all this discussion that in the administration of our national affairs, outlying, unorganized territory has never been considered as a part of the United States, and that the Constitution has not been regarded as extending over it.

We respectfully submit that this is an error. There has doubtless been a difference of opinion upon this subject, but we think a careful reading of American history will show that territory outside of the boundaries of the States has generally been regarded as a part of the United States and subject to the Constitution.

The conduct of those in charge of public affairs has been, as a rule, based upon the idea that the Constitution, of its own force, reaches over all lands subject to national jurisdiction.

In the treaty of peace between the United States and Great Britain this fact is clearly recognized.

Provisional articles for treating of peace between the two governments were signed on the 30th day of November, 1782. The definitive treaty between the United States and Great Britain was concluded at Paris, September 3, 1783, ratified by Congress January 14, 1784, and proclamation made on the same day. The treaty contains a complete description of the boundaries of the United States. Article 2 reads as follows:

> "And that all disputes which might arise in the future on the subject of the boundaries of the said United States may be prevented. It is hereby decreed and declared that the following are and shall be their boundaries."

Here follows a minute description of the territorial domain of the United States. It is of great length, and we do not wish to incorpo-

rate it in the brief. It is sufficient to say that the United States, according to this treaty, was bounded on the north by the Great Lakes and the St. Lawrence River, on the east by the Atlantic Ocean, on the south by the 31st parallel of north latitude, and on the west by the Mississippi River. It contained a tract of land over nine hundred miles long and over one thousand miles wide. More than three-fourths of the territory embraced in this description was in an unorganized state. It was afterwards converted into Territories and then into States, among which are Ohio, Illinois, and others. Here is a clear official and authoritative definition of what the United States are and what they embrace.

The definition of the United States, as now asserted by the Government, would have left out all this vast domain, and yet it was expressly included in the treaty and expressly declared to be the United States. It was so understood at that time. It embraced all the lands over which the national authority extended.

George Washington, the president of the convention which framed the Constitution, and also our first President, by his official acts in a great variety of ways, recognized the doctrine for which we contend. The Constitution provides for the calling out of the militia to execute the laws of the Union, suppress insurrections, and repel invasion.

In September, 1789, there was trouble between the Wabash Indians and the inhabitants of the western territory. The governor of that territory communicated with the President, and on the 16th of that month Washington sent a message to Congress, of which the following is the closing paragraph: "I think proper to suggest to your consideration the expediency of making some temporary provision for the calling out of the militia of United States *for purposes stated in the Constitution*, which would embrace the case apprehended by the governor of the western territory."

Here, in the opinion of the President, that clause in the Constitution respecting the suppression of insurrection reached into the States and Territories, and imposed upon him as the President of the United States the duty of looking after the peace and welfare of that vast but unorganized region. He had no doubt upon this subject, and acted with the promptness and decision which the occasion required.

Again, in his annual message to Congress, January 8, 1790, Washington alludes to the fact that certain pacific measures had proven insufficient to suppress the Indian depredations on the southern and western frontier, and he declares that "we ought to be prepared to offer protection to *those parts of the Union*, and, if necessary, to punish the aggressors."

Here, also, in the mind of this great President the Constitution extended to the entire national domain, organized and unorganized, and he held it to be his solemn duty to see that the laws were enforced and protection offered to all of the inhabitants. No one can read his farewell address without being impressed with the idea that in his mind the nation embraced each and every part over which the governmental authority extended.

We think it can safely be asserted that practically the same view has been entertained by a majority of the Presidents of the United States since that time. Questions have been constantly arising which relate to the management of the Territories.

Ports of entry and forest reservations have been established by

order of the President, not under any territorial law, but under general statutes, and in some instances without any statutes at all.

According to the message of President McKinley, under date of June 28, 1898, there have been established since March 3, 1891, forest reservations, not including the fish culture reserve in Alaska, amounting to 40,719,474 acres. Some of these reservations are in States and some in Territories. These were all by Executive order.

Internal-revenue laws have been carried into and enforced in Territories as well as States, and the statutes of 1868 by its terms enforces the revenue laws over all lands included within the exterior boundaries of the United States at that time. These were understood to include Territories and the District of Columbia, and the laws were enforced in these Territories and the District, and collectors appointed in the same manner as in the States of the Union. The general policy of the Government for nearly one hundred years has been to take care of, govern, control, and protect the people of the entire national domain, and no distinction has been made between that which was States and that which was Territories, and the doctrine has been that the Constitution, and also the general statutes, as far as applicable, reach over all newly acquired possessions as soon as the title passes to the United States.

VII.

THE PRESIDENT HAS NO LEGISLATIVE AUTHORITY AND HIS ACTS FIXING A TARIFF FOR PORTO RICO ARE VOID.

Ours is a constitutional government. Every public officer is subject to the provisions of that instrument and the laws enacted in pursuance thereof. Any other theory is contrary to the spirit of American institutions, and the plans and purposes of the founders of the nation. The idea that any part of the country, or of the people, is beyond the protection and authority of that instrument; that there is a sort of "no man's land," a place where the inhabitants are without any protection whatever, is monstrous. Who ever dreamed that when the President is inaugurated and takes the oath of office to support the Constitution, that the same is in force as to the organized States and is of no force or effect as to the other portions of our territorial domain?

If Porto Rico and the Philippine Islands are no part of the United States, what business has Congress or the President to meddle with them at all? If they *are* a part of the Union, what right is there to collect duties as though they were foreign countries?

The provisions in the Constitution which declare that Congress shall make all needful rules and regulations respecting the territory or other property belonging to the United States necessarily presupposes and implies that there is now, or may in the future be, territory which belongs to and is a part of the United States requiring the attention of Congress; that there are within the limits of the country lands which belong to this Government, and whose local affairs are to be placed in charge of the National Legislature, that Legislature all the time acting in subordination to the Constitution.

This brings us to the consideration of another feature of the case. We contend that the President is an executive officer only. He has no legislative functions. He has no power to make laws, either for the States or Territories.

The duties collected from Carlos Armstrong in the present case were not collected under any law, either of the United States or Spain, and the military authorities were not seeking to enforce any statute of either country.

The collections were made under Executive orders issued by the President. Prior to the signing of the protocol, August 12, 1898, certain duties and taxes fixed by the Spanish law had been collected by the military officers under the command of General Miles. This was done under the so-called "war power," but these collections ceased upon the signing of the protocol and the cessation of hostilities, and the whole tariff system was changed. On the 19th day of August, 1898, the following order was issued by the President and published by order of the Secretary of War:

"WAR DEPARTMENT,
"*Washington, August 19th, 1898.*

"The following order of the President is published for the information and guidance of all concerned:

"EXECUTIVE MANSION,
"*August 19, 1898.*

"By virtue of the authority invested in me as Commander in Chief of the Army and Navy of the United States of America, I do hereby order and direct that upon the occupation and possession of any ports and any places in the island of Porto Rico by the forces of the United States the following tariff of duties and taxes to be levied and collected as a military contribution, and regulations for the administration thereof shall take effect and be in force in the ports and places so occupied.

"Questions arising under said tariff and regulations shall be decided by the general in command of the United States forces in that island. Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder.

"Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War.

"WILLIAM MCKINLEY.

"Upon the occupation of any ports or places in the island of Porto Rico by the forces of the United States, the foregoing order will be proclaimed and enforced.

"R. A. ALGER,
"*Secretary of War.*"

Following this Executive order, and attached to it, were "Regulations for the guidance of officers detailed for the collection of these army duties on imports and exports, taxes and other charges and exactions to be levied and collected as a military contribution at ports and places of Porto Rico in the possession of, or under the control of, the forces of the United States."

Careful and minute regulations were made. Following these regulations was a tariff law consisting of thirty-eight pages, in which are set forth the articles that are to be on the free list absolutely and those which are to be upon the free list subject to conditions, and then a detailed statement of the articles upon which duty was to be collected, giving the rate of duty and the amount of tax to be collected.

It was a carefully prepared tariff bill, such as might be passed by a legislative body. It was neither according to the terms of the Dingley Act nor the terms of the Spanish law upon the subject, but seems to have been a modification of the two.

These taxes were collected from the appellant by the officers of the United States Army. On the 9th day of September the President issued another Executive order providing for the selling at auction of all goods and merchandise upon which the duties were not paid within ninety days from the date of importation. The order is as follows:

"EXECUTIVE MANSION,
"*September 9th, 1898.*

"Article XIV of customs tariff and regulations for ports in Porto Rico in possession of the United States is hereby amended so as to read as follows:

"Any goods, wares, and merchandise not duly entered for payment of duty within ninety days after importation shall be sold at auction, by order of the officer in command of the United States forces, after five days' public notice conspicuously posted at the port, provided that the period of ninety days may be extended by said officer not exceeding a period of six months from the date of importation, when good and sufficient reasons therefor are presented to him, if, in his judgment, the interests of the Government will permit such extension. The proceeds of such sale will be kept for ten days subject to the demand of the importer, after the deduction of the proper duties on the goods and all expenses of storage and sale.

"WILLIAM MCKINLEY."

Other Executive orders were issued by the President from time to time, relating to the collection of the tariff duties, methods of procedure and appropriations of the funds, which it is not necessary here to mention.

On the 20th day of January, 1899, the President issued another order amending the act of August 19th, 1898, to take effect February 1st, 1899. It is as follows:

"WAR DEPARTMENT,
"*Washington, D. C., January 20, 1899.*

"The following order of the President is published for the information and guidance of all concerned:

"EXECUTIVE MANSION, *January 20, 1899.*

"By virtue of the authority vested in me as Commander in Chief of the Army and Navy of the United States of America, I do hereby order and direct that the following tariff of duties and taxes shall be levied and collected, and the regulations for the administration thereof shall take effect and be in force in all ports and places in the island of Porto Rico and all islands in the West Indies east of the 74th degree, west longitude, evacuated by Spain on and after February 1, 1899.

"All questions arising in the administration of customs shall be referred to the collector at the port of San Juan for decision, and there shall be no appeal from such decisions except in cases where the collector may find it expedient to ask for special instructions of the War Department on the points involved.

"Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder.

"Accurate account of collections and expenditures shall be kept and rendered to the Secretary of War.

"WILLIAM MCKINLEY.

"The above order and the following tariff of duties and taxes prescribed thereunder will be proclaimed and enforced, as therein provided, and all regulations and orders heretofore issued inconsistent herewith are hereby repealed.

"G. D. MEIKLEJOHN,
"*Acting Secretary of War.*"

With the promulgation of this last-named Executive order, there was furnished a schedule of duties, which materially modified and changed the schedule of August 19, 1898.

From that time forward duties were collected under this amended order. In these several orders, as before stated, the President declares what articles shall be free and what subject to duty. He fixes the amount of the tax, subjects the goods to public sale or forfeiture if the duty is not paid, and he confides the execution of these President-made laws to the officers of the Army. All the collections were made after the protocol was signed, and many of them after the treaty of peace was signed at Paris, ratified by the Senate and the Queen Regent of Spain, and ratifications exchanged between the two Governments.

Here were acts of legislation upon the part of the President without any authority under the Constitution, in a time of peace, and after Porto Rico, as we claim, was a part of the United States. It can not be fairly contended that this was an exercise of the war power, or an act done as a military necessity. The war was over. The sixth clause of the protocol, which was signed on the 12th of August, reads as follows:

"6. On the signing of the protocol hostilities will be suspended, and notice to that effect will be given as soon as possible by each Government to the commanders of its military and naval forces." (30th Stat., 1742.)

In pursuance of this provision of the protocol there was an immediate cessation of hostilities by order of the President.

As further evidence bearing upon this subject, the President, in his message to Congress, December 5, 1899, speaking of the war and the cessation of hostilities, uses this language:

"The withdrawal of the authority of Spain from the island of Cuba was effected by the 1st of January, so that the full reestablishment of peace found the relinquished territory held by us in trust for the inhabitants."

What was true of Cuba as to establishment of peace, was true of Porto Rico. The fact is there had never been any real war in Porto Rico, and that there was absolute peace even before the signing of the protocol. It is admitted by the demurrer in this case that after the 12th of August, 1898, the inhabitants were in a condition of peace and in the enjoyment of their civil rights, except as affected by the action of the President and the military authorities.

We respectfully contend that all these acts and Executive orders of the President were without warrant of law or any authority under the Constitution of the United States. Upon what ground can they be successfully justified or defended? We are aware that in time of war the person commanding the military forces of the United States is often justified in doing things which, under ordinary circumstances, could not be sanctioned. Under what is known and called as the "war power," or the doctrine of "military necessity," a nation which is at war with another is often justified in doing whatever is necessary to achieve victory and accomplish the result for which the country has gone to war. "In the midst of war the laws are silent." But the plea of military necessity can not, by any possibility, be raised in the present case.

We concede that when a great exigency arises and a great responsibility is cast upon the Chief Executive of the nation, we ought not to look too critically to the manner in which he administers its affairs; but we have a right to insist, and all patriotic citizens should insist, that he shall keep within the powers expressed or implied, given in the Constitution, which he has sworn to support.

This subject of the legitimate exercise of the war power has received a large amount of attention from the courts, and also from notable writers upon military and constitutional law.

Benjamin R. Curtis, writing upon the subject of Executive power, says:

> "The President is the Commander in Chief of the Army and Navy, not only by force of the Constitution, but under and subject to the Constitution, and to every restriction therein contained, and to every law enacted by its authority, as completely and clearly as the private in the ranks. He is general in chief, but can a general in chief disobey any law of his country? When he can he superadds to his rights as commander the powers of a usurper, and that is military despotism. * * * The mere authority to command an army is not authority to disobey the laws of the country." ("Executive Power," by Benjamin R. Curtis, Cambridge, Mass., 1862.)

Daniel Webster, speaking on the same subject, says:

> "It is perfectly plain and manifest that, although the framers of the Constitution meant to confer executive power on the President, yet they meant to define and limit that power, and to confer no more than they did thus define and limit. When they say it shall be vested in a President, they mean that one magistrate, to be called a President, shall hold executive authority; but they mean, further, that he shall hold this authority according to the grants and limitations of the Constitution itself." (4 Webster Works, p. 186.)

Mr. Chief Justice Chase, in the case of *Texas* v. *White*, 7 Wal., 700, in the course of his opinion, uses the following language:

> "The power exercised by the President was supposed, doubtless, to be derived from his constitutional functions as Commander in Chief; and so long as the war continued it can not be denied that he might institute temporary government within insurgent districts occupied by the national forces, or take measures in any

State for the restoration of State governments faithful to the Union, employing, however, in such efforts only such means and agents as were authorized by the constitutional laws."

Clearly, in the mind of the Chief Justice, the President, as Commander in Chief of the Army, was justified only in the adoption of such measures as *were necessary for a successful prosecution of the war.*

The opinion of Judge Leavitt, in *Ex parte* Valandingham (Rickey & Carroll, p. 226), is in the same direction, and he, with great precision, sets forth the ground of the President's authority as Commander in Chief of the Army.

"In time of war the President is not above the Constitution, but derives his power expressly under provision of that instrument declaring that he shall be Commander in Chief of the Army. The Constitution does not specify the powers he may rightfully exercise in this territory, nor are they defined by legislation. No one denies, however, that the President in this character is invested with very high powers, which it is well known has been called into exercise on various occasions during the present rebellion. * * *

"It is, perhaps, not easy to define what acts are properly within this designation, *but they must undoubtedly be limited to such as are necessary to the protection and preservation of the Government and Constitution*, which the President has sworn to support."

It will be difficult to induce anybody to believe that the levying of duties on goods brought into Porto Rico after the signing of the protocol and the ratification of the treaty of peace was necessary to preserve this Government or conquer a nation which had already surrendered to the United States forces, and that, too, after terms of peace and a full agreement of settlement had been arrived at by both parties.

The case of Ex parte Milligan, 4th Wallace, 2, presents a very full exposition of this whole subject, and the judgment rendered in that case by this court is very deserving of consideration. In the course of his opinion Mr. Justice Davis (page 124) says:

"It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: That in a time of war the commander of an armed force, if in his opinion the exigencies of the country demand it, and of which he is to be the judge, has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of his will, and in the exercise of his lawful authority can not be restrained except by his superior officer or the President of the United States.

"If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limit, on the plea of necessity, the approval of the Executive, substitute military force for and to the exclusion of the laws, and punish all persons as he thinks right and proper, within fixed or certain rules.

"The statement of this proposition shows its importance, for, if true, republican government is a failure, and there is an end

of liberty regulated by law. Martial law established on such a basis destroys every guarantee of the Constitution and effectually renders the military independent of and superior to the civil power—the attempt to do which by the King of Great Britain was deemed by our fathers such an offense that they assigned it to the world as one of the causes which impelled them to declare their independence.

"Civil liberty and this kind of martial law can not endure together. The antagonism is irreconcilable, and in the conflict one or the other must perish."

In another part of the opinion the learned judge says:

"The Constitution of the United States is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during the great exigencies of a government. Such a doctrine leads directly to despotism or anarchy. But the theory of necessity upon which it is based is false, for the Government within the Constitution has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority."

The people of the United States have always been and should always be jealous of their constitutional rights. If an executive officer proceeds to make laws and enact statutes they naturally inquire what are the sources of his authority. The Constitution of the United States declares that all legislative powers shall be in a House of Representatives and Senate. They, and they alone, can pass tariff laws. And even they will hardly be permitted to enact statutes for a foreign government, and lay the burden of taxation upon the people of a foreign country.

There is no pretense, however, that these executive orders of the President were issued by the order of or with the sanction of Congress. It is a plain, simple attempt upon the part of the Chief Executive of the country to make laws for the inhabitants of an island which, after war, and by a solemn treaty of peace, has become a part of the United States.

The money collected in this extraordinary and unauthorized manner was placed in the Treasury of the United States, and is there now. It is no excuse or defense for these executive acts in Porto Rico, that they were done in the belief that the people there would be benefited in the end. If such things can be done in one case they can be done in another. The President may lay any burden he pleases upon them. The distinction between executive and legislative authority is entirely obliterated. In the present case the President not only assumes legislative and executive functions, but judicial power as well; for he provides in the order of August 19th, 1898, that questions arising under said tariff regulations shall be decided by the general in command of the United States forces in the island. Here is a trinity of powers—legislative, executive, and judicial—all united in one person. This creates a military despotism.

It is urged, however, as an excuse for the exercise of arbitrary authority in Porto Rico, that this island coming into our possession suddenly, it is the duty of the President to govern it until such a time as Congress shall establish laws for its protection and control. That during this interval of time the island and the people must be governed by the military forces as a matter of necessity.

We would like to know how the enactment of a tariff law by the President is necessary for the government of these people. If this island belongs to the United States then the Constitution and laws of the United States extend over it, and it is the "plain duty" of the President to observe and enforce this Constitution and these laws.

His right to maintain public peace and order and to suppress rebellion and insurrection is unquestioned, and it stands upon a much firmer basis if the island is a part of the United States than if it is foreign territory. Being a part of the United States, his oath under the Constitution requires him to use all his power to put down insurrection and protect the lives and property of the inhabitants.

He has as much right to maintain order in the Territories as in the States, but the authority to *execute* the laws does not imply the right to make laws. If he can enact tariff statutes and burden the people with the payment of heavy duties and can confiscate their property and allow no appeal to the civil tribunals or to the courts, then he can oppress them in any other way he choses. If he can take their property he can also deprive them of their liberties.

The learned Attorney-General, in his argument before this court in the Diamond Rings case, on page 11, says:

> "It is worth while in passing to allude to the undeniable fact that 'the people' referred to are not the people of the Territories or of the outlying possessions of the United States, but the people of the several States who ordained and established for *themselves and posterity* the Federal Constitution."

If this is true, then Washington, Adams, Franklin, Jefferson, and the other founders of the nation must have been far more selfish and unpatriotic than we have been accustomed to believe.

Our opponents would make us think that the fathers wanted liberty and equal rights for themselves and the people of the thirteen States, but as to the magnificent, unorganized domain outside, and the millions of people who should inhabit it in the centuries to come, they were utterly indifferent. For aught they cared these vast outlying regions belonging to the Government and the generations of men who would inhabit them might be denied the right of self-government, and, what is still more, that the President of the favored States should have the power to arbitrarily rule over all who were so unfortunate as to dwell outside their boundaries.

We can not subscribe to this doctrine. The patriots of the Revolutionary period were broad-minded men, and they framed a Constitution whose jurisdiction was as far-reaching as the national authority and the national domain.

From this argument it follows:

1st. That this is a constitutional Government—a republic, in which is no despotic power.

2d. That the words United States, as used in the Constitution, mean all lands and territory over which the national authority extends.

3d. That when lands are ceded to the United States and accepted by this Government they become part of the United States and the Constitution extends over them.

4th. That Porto Rico became part of the United States upon the ratification of the treaty with Spain, and the ports of entry therein thereby became domestic ports of the United States.

5th. That the inhabitants of that island can not rightfully be compelled to pay duties on goods brought from other parts of the Union.

6th. That the President is an executive officer only. He does not possess legislative power, and all laws made by him which impose duties upon commerce between the States and Porto Rico are void, and all duties and taxes collected by the military authorities under such laws are collected without authority of law and in violation of the Constitution.

7th. That appellant, residing in Porto Rico and doing business there, had a right to the shipment of goods, for consumption in said island free of duty from New York, Philadelphia, and Baltimore.

Respectfully submitted.

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